CIVIL ACTION DOCKET NO.

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY
CAMDEN, NEW JERSEY 08101

DOM WADHWA, M.D., *pro se*
Plaintiff,

v.

Secretary
Department of Veterans Affairs
Défendant.

Plaintiffs Initial Brief

DEFENDANT'S REFUSAL TO COMPLY WITH FOIA/PRIVACY ACT

Dom Wadhwa, M.D., *pro se*
Plaintiff
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Dated: April 16, 2015

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY

DOM WADHWA, M.D., *pro se* Plaintiff,	: Jury Trial Demanded : Civil Action No.
v.	: :
Secretary, Department of Veterans Affairs (agency), Defendant.	: :

DEFENDANT'S REFUSAL TO COMPLY WITH FOIA/PRIVACY ACT

I, Dom Wadhwa, M.D., *pro se*, hereby file a civil action lawsuit for refusal by management officials at the Philadelphia VA Medical Center (PVAMC)[1] to comply with the Freedom of Information (FOIA)/Privacy Act (defendant) (agency). **(Exhibit AA)**

COMPLAINT

On January 21, 2015, I served upon the VA (defendant) a *Freedom of Information (FOIA)* and *Privacy Act* request in which I was seeking documents on employment discrimination against three non-Caucasians physicians (which included myself). **(Exhibit AA)** I have made **five additional requests** for the **same information**, and the defendant has not been forthcoming for my multiple requests. **(Exhibit AA – 2nd to 5th FOIA/Privacy Act Request)**

[1] **Management** officials at PVAMC (agency) are Ralph Schapira, M.D. (Dr. Schapira), Chief of Staff & my supervisor in the Compensation & Pension (C&P) Section, Daniel Hendee (Mr. Hendee), Medical Center Director, William Kavesh, M.D. (Dr. Kavesh), Staff Physician in C&P Section, and other management officials in the Human Resources Department (HR).

PROCEDURAL HISTORY

I. EMPLOYMENT DISCRIMINATION AGAISNT NON-CAUCASIAN PHYSICIANS BY AGENCY OFFICIALS AT PVAMC – REPLACEMENT WITH CAUCASIANS FROM UNIVERSITY OF PENNSYLVANIA

Ralph Schapira, M.D., (RS), Chief of Staff and my Supervisor in Compensation & Pension Department, and Daniel Hendee (DH), Medical Center Director, are the Responsible Management Officials (RMOs) who were involved in employment discrimination against **three** non-Caucasians (including myself), as follows:

1. Former non-Caucasian Assistant Chief of Staff removed from his position on or about September 27, 2013 and replaced by a Caucasian female physician from the University of Pennsylvania (under a new title of Associate Chief of Staff but with similar responsibilities) and denial of his entire performance pay;

2. A non-Caucasian, on December 18, 2014, was given a *proposed* removal from his 27-year full-time VA employment and letter of intent to report him to the State Licensing Board for *alleged* misconduct, forced to turn in his resignation or face the *dire* consequence of having his medical license revoked.

3. I, as a non-Caucasian, on January 8, 2015, was hand-delivered 12 (twelve) administrative mishaps, and I was charged with *alleged* misconduct, for which I received a **demotion** and marked reduction in performance pay by 49% ($7139 from a total amount $14,639), and preparation was underway by agency officials at PVAMC for a *proposed* removal from my 28-year full-time VA employment for *alleged* misconduct, forcing me to turn in my resignation or face the *dire* consequence of having my medical license revoked.

Review of the testimonies given by RS on May 9, 2014 and DH on June 3, 2014 in the employment discrimination complaints filed by the former Assistant Chief of Staff there is circumstantial evidence that high ranking management officials at the University of Pennsylvania are closely interacting with RS and DH which has resulted in **premeditated plan for forced removal** of at least two non-Caucasian physicians from their employment at PVAMC (former Assistant Chief of Staff on or about September 27, 2013, and another non-Caucasian physician on December 18, 2014), and **replacing both of them with Caucasian physicians from University of Pennsylvania**, which is a violation of Title VII Federal Law.

II. EMPLOYMENT AGE DISCRIMINATION BY AGENCY OFFICIALS AT PVAMC – REPLACEMENT WITH YOUNGER PHSYICIANS FROM THE UNIVERSITY OF PENNSYLVANIA

Review of the testimonies given by RS on May 9, 2014 and DH on June 3, 2014 in the employment discrimination complaints filed by the former Assistant Chief of Staff there is circumstantial evidence that RS and DH have a **premeditated plan for forced removal or forced retirement** of older physicians and replacing them with younger physicians from the University of Pennsylvania, which is a violation of Title VII Federal Law.

Older physicians are provided a letter of intent to report to the State Licensing Board of their *alleged* misconduct, like the one that was generated against a non-Caucasian on December 18, 2018 of his *alleged* misconduct, forcing him to resign or face the *dire* consequence of having his medical license to practice medicine revoked (**Exhibit B** – Evidence in Support of Claim)

III. DENIAL OF PERFORMANCE PAY FOR *ALLEGED* MISCONDUCT

RS and DH issued me two annual proficiency ratings for the same period FY 2014 (one rated low satisfactory and another rated satisfactory) without signatures of the approving officials (RS and DH). (**Exhibit C1& Exhibit C2**)

RS and DH issued me two performance pay ratings for the same period FY2014 and a demotion in the form of **marked reduction in my performance pay** by 59% (initial amount $ 6500- **Exhibit D1**), and later changed to reduction in my performance pay by 51% (Final amount $7,500 on the SF-50 –**Exhibit D2**). In the remarks section I am *alleged* misconduct. This reduction was punitive for *alleged* misconduct, without credible evidence. My performance pay was not based on additional activities I was involved in during the entire fiscal year (FY 2014) assisting clinical staff with computer-related issues, almost on a daily basis.

Please note: On November 18, 2014, VA OEDCA issued a Final Agency Decision (FAD) which determined by a preponderance of evidence that RS and DH **denied performance pay** to a non-Caucasian Assistant Chief of Staff in retaliation for his EEO activity. (**Exhibit A**)

PARTIES

1. I, Dom Wadhwa, M.D., plaintiff, am a citizen of the United States and a resident of the County of Burlington, State of New Jersey.

2. Secretary, Department of Veterans Affairs (agency), defendant, is duly Appointed and acting official charged with the administration of the laws and implementing regulations, instruction and directives affecting the U.S. Department of Veterans Affairs and its employees at PVAMC in the area of job discrimination under Title VII.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to:

(a) 5 U.S.C. §552 and §552a in that this action is the nature of the *Freedom Information Act* (FOIA) claim and a *Privacy Act* claim to compel an officer or an employee of the FBP to produce records which have been requested by the plaintiff pursuant to the FOIA/Privacy Act.

(b) 28 U.S.C. §1331, in that this action arises under the Constitution, laws, or treaties of the United States; and

(c) 5 U.S.C. §§701-706, in that this action is brought by a person suffering legal wrongs because of agency action or adversely affected or aggrieved by the agency action within the meaning of a relevant substantive statute.

VENUE

The United States District Court for the District of New Jersey is the appropriate venue for this action pursuant to 5 U.S.C. § 552 (a) (4)(B) § 552a (g)(5) and 28 U.S.C. 1391 (e)(2), in that I (plaintiff, Dr. Wadhwa) resides in this judicial district.

The agency has not provided the necessary documents I had requested on January 21, 2015, under the *Freedom of Information (FOIA)* and *Privacy Act*. **(Exhibit AA)**

As stated earlier, I have made **five** additional requests for the same information, and agency has not provided the necessary documents I had first requested on January 21, 2015. (**Exhibit AA –2nd request** on February 17, 2015, **3rd request** on March 3, 2015, **4th request** on March10, 2015, and the **5th request** on March 13, 2015)

I filed the formal administrative appeal on March 19, 2015, with no response. (**Exhibit BB**)

EXHAUSTED ADMINISTRATIVE REMEDIES

AGENCY'S RESPONSE TO MULTIPLE FOIA/PRIVACY ACT REQUESTS

The agency responded to my multiple FOIA/Privacy Act requests, as follows:

FOIA Exemption 6, 5 U.S.C. § 552(b)(6). FOIA Exemption 6 permits VA to withhold a document or information contained within a document if disclosure of the information would constitute a clearly unwarranted invasion of a living individual's personal privacy. Stated another way, VA may withhold information under FOIA Exemption 6 where disclosure of the information, either by itself or in conjunction with other information available to either the public or the FOIA requester, would result in an unwarranted invasion of an individual's personal privacy without contributing significantly to the public's understanding of the activities of the federal government.

The statutory period in which the VA was required to respond has passed on March 30, 2015. To date, the agency officials at PVAMC refuse to supply documents responsive to my *FOIA/Privacy Act* request.(**Exhibit AA and Exhibit BB**)

I have exhausted my administrative remedies, pursuant to 5 U.S.C. § 552 (a) (6) (C) (i). Defendant's refusal to disclose the requested documents is wrongful, capricious, arbitrary, and without lawful reason, or excuse, I (Dr. Wadhwa) am entitled to the relief provided by the *FOIA/Privacy* Act.

COMPEL DEFENDANT FOR PRODUCTION OF DOCUMENTS

I hereby request this Honorable Court to compel the defendant for production of this information, for the court fees, and all damages I am entitled to under the law, in order to obtain this information, pursuant to 38 U.S.C. § 552a (g)(I) of the Privacy Act, and 38 U.S.C. §552 (a)(4)(B) of FOIA.

CONCLUSION AND REQUEST FOR RELIEF:

Wherefore, I (Dr. Wadhwa, plaintiff) respectfully requests this Court enter an orders (a) Directing the defendant to release to me a copy of all documents identified by this complaint;

(b) Award me Court costs;

(c) Granting other and further relief which the Court may deem proper.

Please acknowledge receipt of the enclosed $400 filing fee, along with the necessary documents, for this civil action lawsuit.

Respectfully submitted,

Dom Wadhwa, M.D., *pro se*
Plaintiff

Dated: April 16, 2015

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY

DOM WADHWA, M.D., *pro se* Plaintiff, v. Secretary, Department of Veterans Affairs (agency), Defendant.	Jury Trial Demanded Civil Action No.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing complaint, with Exhibit AA & Exhibit BB, and Exhibits A to D, was served upon the following by regular first class mail, this date, to:

Secretary, Department of Veterans Affairs
Attn: Sloan Gibson, Deputy Secretary of Veterans Affairs
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Dom Wadhwa MD

Dom Wadhwa, M.D., *pro se*
Plaintiff

Dated: April 16, 2015

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